IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1017 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANTABEN RAJESHKUMAR BARAIYA

Versus

ELECTION OFFICER KHEDA DISTRICT PANCHAYAT

Appearance:

MR JA ADESHRA for Petitioner No. 1

MR PREMAL JOSHI, AGP Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 07/02/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

Rule. Mr.Premal Joshi, learned AGP waives the service of Rule on behalf of the respondent.

With the consent of the parties, the petition is heard today.

The petitioner belongs to socially and economically backward class and had filed her Nomination

Form from Ward No.1 - Alina of Kheda District Panchayat for the election to the post of Member. One Shri Baraiya Kanjibhai Budhabhai who is a voter of Ward No.1 - Alina Constituency had proposed the name of the petitioner. It is the case of the petitioner that instead of Sr.No.691, said Shri Baraiya Kanjibhai Budhabhai had wrongly mentioned the Serial Number of his name in the Voters' List as 674 in the Nomination Form of the petitioner. On 28.1.2003, the respondent, the Election Officer scrutinised the Nomination Forms filled in by the candidates and on the same day, by passing an order, rejected the Nomination Form of the petitioner on the ground that the proposer Baraiya Kanjibhai Budhabhai had wrongly stated serial number of his name in the voters' list. The petitioner has challenged the said order in the present petition.

Learned AGP Mr.Premal Joshi submits that the petitioner has an alternative remedy by filing election petition after the declaration of the result of the election and therefore, the petition requires to be rejected on this ground alone.

Under ordinary circumstances, this Court could have rejected the petition on this ground alone. However, in the instant case, the Nomination Form which is rejected on the ground is apparently an error of technical nature which could have been got corrected. In our opinion, the Returning Officer could have given an opportunity to correct the technical error of not mentioning of the serial number in the Voters' list instead of straightaway rejecting the Nomination paper of the petitioner. We are supported with the view which we are taking by the decisions of this Court in the case of Smt.Navuba Gokalji Chavda and ors. v. The Returning Officer and ors., reported in 1982(2) GLR 397 and in the case of Shri Sisodia v. V.N.Maida and anr., reported in 1987(20 GLH (UJ) 10. In the said decisions, the Nomination Papers were rejected on the ground that incorrect Serial Number in the Voters' List was stated. This Court took the view that this mistake is not a substantial defect and therefore, the order passed by the Returning Officer rejecting the Nomination Papers is set aside.

Learned AGP Mr.Premal Joshi submits that in the instant case, the Returning Officer has in fact held a summary inquiry under Sec.10(2) of the Election Rules and therefore, his order cannot be faulted with. In our opinion, since the nomination paper of the petitioner is rejected on the ground which is technical in nature,

it could have been corrected. Relying upon the aforesaid decisions, this petition requires to be allowed.

In the result, this petition is allowed. The Returning Officer is directed to accept the Nomination Form of the petitioner and permit her to participate in the election scheduled to be held on 16th February 2003. Rule is made absolute accordingly. Direct service of this order (operative portion) today is permitted.

(Kshitij R. Vyas, J.)

(Sharad D. Dave, J.)

Sreeram.